

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

2140.0020001/DRB/JHH

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On _____

Signature _____

Typed or printed
name _____

Application Number

10/632,799

Filed

August 4, 2003

First Named Inventor

Jie CHENG

Art Unit

3625

Examiner

Mila Airapetian

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)
- ☒ attorney or agent of record.
Registration number 58,010
- ☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____



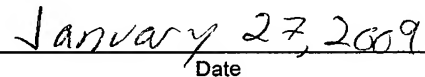
Signature

John T. Haran

Typed or printed name

(202) 371-2600

Telephone number



Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Cheng *et al.*

Appl. No.: 10/632,799

Filed: August 4, 2003

For: **Optimized Auction Commodity
Distribution System, Method, and
Computer Program Product**

Confirmation No.: 5549

Art Unit: 3625

Examiner: Mila Airapetian

Atty. Docket: 2140.0020001/DRB/JHH

Arguments to Accompany the Pre-Appeal Brief Request for Review

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants hereby submit the following Arguments, in five (5) or less total pages, as an attachment to the Pre-Appeal Brief Request for Review (Form PTO/SB/33). A Notice of Appeal is concurrently filed herewith.

Summary of Request

The October 30, 2008 Final Office Action contains a single rejection. Specifically, all pending claims (claims 1-22, 29-50, 57-78, and 85-88) have been rejected under 35 U.S.C. §103(a) for allegedly being unpatentable over U.S. Patent No. 7,343,355 to Ivanov *et al.* ("the Ivanov patent") in view of U.S. Pub. No. 2002/0082977 to Hammond *et al.* ("the Hammond publication").¹ This rejection is improper. The Examiner has failed to establish a *prima facie* case of obviousness based upon these references. Without more evidence of unpatentability, Applicants are entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

¹ The Examiner has provided a basis for the rejection of claims 1-22 and 85-88, but the Office Action does not provide an explanation of the rejection with respect to claims 29-50 or claims 57-78.

Arguments

As discussed on page 40 of the Amendment and Reply filed July 7, 2008, the present invention is directed to generating an optimized auction commodity distribution plan, for selling each of one or more present auction commodity products, such as, for example, automotive vehicles, at a single auction site, chosen from one or more auction sites. Each of independent claims 1, 29, 57, and 85 includes a step of or means for generating an optimized distribution plan, specifically a plan as to which one of the one or more auction sites each of the one or more present auction commodity products should be distributed for sale, based on a generated forecast price.

- Independent claim 1 recites a "method for generating an optimized auction commodity distribution plan" that comprises "generating an optimized auction commodity distribution plan for said one or more present auction commodity products using said generated forecast price."
- Independent claim 29 recites a "system for generating an optimized auction commodity distribution plan comprising . . . means for generating an optimized auction commodity distribution plan for said one or more present auction commodity products using said generated forecast price."
- Independent claim 57 recites a "computer program product embodied on a computer useable medium comprising computer program logic stored therein for generating an optimized auction commodity distribution plan" comprising "computer readable program code means for generating an optimized auction commodity distribution plan for said one or more present auction commodity products using said generated forecast price."
- Independent claim 85 recites a "method for generating an optimized auction commodity distribution plan for a plurality of present auction commodity products to be auctioned at one or more of a plurality of auction sites" that comprises "generating an optimized auction commodity distribution plan for said plurality present auction commodity products using said generated forecast price, wherein said optimized auction commodity distribution plan is a plan for distributing each of said present auction commodity products to one of said plurality of auction sites."

Neither the Ivanov patent, nor the Hammond publication, alone or in combination, disclose or suggest a step of or means for generating an optimized auction commodity distribution plan based on a generated forecast price, as claimed.

The Examiner has admitted that the Ivanov patent "fails to explicitly teach where the commodity is set for auction." Office Action at p.3. The Ivanov patent appears to be directed to determining an optimized selling price for a commodity with the intent that the commodity will be sold at the optimized selling price, whereas the claimed invention is directed to determining an optimized auction commodity distribution plan with the intent that each commodity will be distributed to and auctioned off at a specified auction site. Modifying the method and system disclosed in the Ivanov patent to work in an auctioning system, where the selling price is not predetermined and definite, is antithetical to the intent and purpose of the Ivanov patent. For at least this reason, combining the Ivanov patent with the Hammond publication, as the Examiner suggests, would destroy the teachings of the Ivanov patent. While the Examiner argues that "Hammond, in an analogous art, explicitly teaches the commodity is set for auction" (Office Action at 3), the Examiner provides no further support for the proposed combination.

Further, neither the Ivanov patent nor the Hammond publication disclose or suggest an optimized distribution plan, as claimed. The Ivanov patent appears to be directed to generating an optimized pricing plan, not an optimized distribution plan. See col. 2, lines 14-15 and col. 3, line 52 to col. 4, line 6, and col. 4, lines 60-65 of the Ivanov patent. In particular, the Ivanov patent appears to be directed toward pricing a commodity regardless of the supply volume for sale. The present invention, on the other hand, focuses on determining a distribution plan that provides the optimum supply

volume for each auction site, in order to maximize the profit of selling a known inventory of commodity products at auction.

Similarly, the Hammond publication is not directed to generating an optimized distribution plan, as claimed. According to the Hammond publication, a product to be auctioned is initially placed at a plurality of on-line auction sites, the system then ranks each site to optimize the closing price, and the product is later removed from all but the site with the highest rank. See paragraphs [0009], [0014], [0137], and [0140] of the Hammond publication. In this manner, the Hammond publication teaches away from generating an optimized distribution plan, opting instead for a "shotgun approach" where a product is placed for auction at several on-line auctions at the same time.

For at least these reasons, independent claims 1, 29, 57, and 85, are patentable and allowance thereof is respectfully requested. Dependent claims 2-28 and 86 depend from and add further features to independent claim 1 and are thus patentable for at least the same reasons as claim 1. Dependent claims 30-56 and 87 depend from and add further features to independent claim 29 and are thus patentable for at least the same reasons as claim 29. Dependent claims 58-84 and 88 depend from and add further features to independent claim 57 and are thus patentable for at least the same reasons as claim 57.

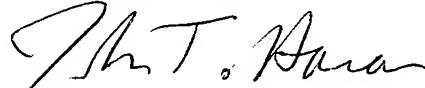
Conclusion

Applicants respectfully submit that the Examiner's combination of references is improper and claims 1-87 are patentable over the cited art. Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration of Applicants' Pre-Appeal Brief Request for Review is respectfully requested.

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



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